

In The United States Court of Federal Claims

No. 09-460L

(Filed: May 16, 2011)

DOUGLAS R. BIGELOW TRUST,
JAMIE MORTENSON, Trustee, *et al.*,
On behalf of themselves and all other
similarly situated persons,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

The attached class Notice and Opt-In Notice form, which generally reflects the content of a draft notice jointly submitted by the parties, is hereby approved and shall be distributed to potential class members.

IT IS SO ORDERED.

s/ Francis M. Allegra
Francis M. Allegra
Judge

UNITED STATES COURT OF FEDERAL CLAIMS

NOTICE OF OPPORTUNITY TO PARTICIPATE IN CLASS ACTION

The court authorized this notice. This is not a solicitation from a lawyer.

TO: All property owners who had an ownership interest on July 29, 2003, in lands constituting part of the railroad corridor or right-of-way located in Gratiot County, Michigan, more particularly described as the portion off the trail located between milepost 40 in Alma, Michigan and milepost 45.5 in Elwell, Michigan, on which a rail line was formerly operated by Mid-Michigan Railroad, Inc. and its predecessors.

BASIC INFORMATION

1. Why did I get this Notice?

Local property records show that you own or previously owned a parcel of property that abuts or is traversed by a segment of the railroad corridor or right-of-way which runs from Alma, Michigan to Elwell, Michigan (railroad line), in Gratiot County, Michigan.

The purpose of this Notice is to inform you of a class action lawsuit (class action) brought against the United States by property owners adjacent to the Railroad Line (named plaintiff), to advise you of how your rights may be affected by the class action, and to instruct you on the procedure to opt into this class action, if you choose to do so. Your options are explained in this notice. **To ask to be included, you must complete and mail (or FAX) an Opt-In Notice (form attached) so that it is received on or before August 3, 2011 (more instructions on this are below).** Plaintiff's lawyers (class counsel) must prove the claims against the United States. If money is obtained from the United States, you will be notified about how to receive a share.

Judge Francis M. Allegra, the Judge of the United States Court of Federal Claims assigned to this case, ordered the distribution of this Notice.

2. What is this lawsuit about?

On July 20, 2009, a complaint was filed against the United States in the United States Court of Federal Claims by named plaintiff for itself and on behalf of a proposed group or "class" of similarly situated

property owners. The lawsuit is about whether the United States has taken plaintiff's ownership interest in the subject railroad right-of-way as a result of an order issued by the Surface Transportation Board that authorized Mid-Michigan Railroad, Inc. to enter into an agreement with the Friends of Fred Meijer Heartland Trail to preserve this right-of-way for future rail use (called "railbanking") and allow trail use of the right-of-way. This lawsuit seeks just compensation from the United States for the alleged taking of this private property for public use, pursuant to the Fifth Amendment of the United States Constitution. Defendant, the United States, denies that named plaintiff or potential class members are entitled to compensation.

Judge Francis M. Allegra of the United States Court of Federal Claims is overseeing this class action. The lawsuit is known as *Douglas R. Bigelow Trust, et al., v. United States*, No. 09-460C.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called "class representatives" (in this case, Douglas R. Bigelow Trust and Jamie Mortenson, *et al.*) sue on behalf of other people who have similar claims. The people together are a "class" or "class members." The people who sued – and all class members like them – are called the "plaintiff." In this case, the United States of America is the defendant. One court will resolve the issues for everyone who asks the court to be included in the class by submitting an Opt-In Notice form. Those individuals who do not submit an Opt-In Notice form will be excluded from the class in this case.

4. Why is this lawsuit a class action?

The court decided that this lawsuit can be a class action and move towards a trial because it meets the requirements of Rule 23 of the Rules of the United States Court of Federal Claims. On March 23, 2011, the court ruled that this case could be maintained as a class action and determined the following:

- The potential class is so numerous that joinder of all members is impracticable;
- There are questions of law and fact common to the class;
- The claims of Douglas R. Bigelow Trust and Jamie Mortenson, *et al.* are typical of the claims of the rest of the class;
- Douglas R. Bigelow Trust and Jamie Mortenson, *et al.*, and the lawyers representing the class will fairly and adequately represent the interests of the class;
- The common legal questions and facts predominate over any questions affecting only individual class members; and
- This class action will be more efficient than having many individual lawsuits.

In doing so, Judge Allegra did not rule on the merits of the named plaintiff's claims or find that the United States has any liability to plaintiff or potential class members. For more information, see the court's March 23, 2011, order, which is available at the court or through the Public Access to Court Records (PACER) system, available at www.pacer.psc.uscourts.gov.

5. Am I an eligible class member?

You are receiving this notice from the court because it has been determined based on a review of public records that you may be an eligible class member. Eligible class members are those owning an interest in land constituting part of the railroad line on July 29, 2003.

6. How can I join the class action?

To be considered eligible to join the class action, you must enroll in the action. To enroll, **you must mail, fax or deliver a completed Opt-In Notice form to class counsel by August 3, 2011.** The Opt-In Notice form is attached to this Notice. (A stamped, addressed envelope has been provided for your convenience). By signing and submitting this enrollment form, you are representing that you, or the entity you represent (such as a trustee of a trust or as an officer of a corporation), owned land on July 29, 2003, that is next to or traverses the railroad line, and that you wish to join the class action to have your potential claim pursued. If you do so and are otherwise eligible, class counsel will enter your appearance in this class action on or before August 17, 2011.

7. What happens if I submit an Opt-In Notice form?

If you become a class member, a judgment in this case will be binding on you, meaning you could not pursue your own separate lawsuit using your own attorney. As a class member, your interests will be represented by the named plaintiff and class counsel. The parties will research your claim and, ultimately, the judge will rule on whether you are entitled to just compensation and, if so, the amount of just compensation due to you.

You may choose not to join the class action. If you wish to pursue your claim separately from the class action, please be aware that the last day to file your own action has passed. This means that if you choose not to be a part of this class action, you cannot file a separate lawsuit to pursue your claim for compensation for this alleged taking.

8. What happens if I do not submit an Opt-In Notice form?

If you do not submit an Opt-In Notice form before August 3, 2011, you will be barred from participating as a class member in this case and you will not receive any monetary recovery from either a trial or settlement. You are entitled to enter an appearance in this matter through private counsel if you desire.

9. What if I no longer own the property that was along the railroad line?

In short, it does not matter. Whether you are still the owner or sold the property some time after July 29, 2003, has no impact on your eligibility. However, you must have owned the property on July 29, 2003, to be considered eligible.

10. Will this case affect the recreational trail?

No. This case does not affect the trail itself and does not attempt to stop it. The claim is against the Federal government, not Gratiot County, the Friends of the Fred Meijer Heartland Trail, or the State of Michigan.

11. Do I have a lawyer in this case?

The Court decided that Mark F. (“Thor”) Hearne, II of the law firm Arent Fox, LLP, 112 South Hanley Road, Suite 200, Clayton, MO 63105, is qualified to represent you and all class members, and is called “class counsel.” More information about Mr. Hearne’s law firm, its practices and its lawyers’ experience is available at www.arentfox.com.

12. Should I get my own lawyer?

You do not need to hire your own lawyer because class counsel is working on your behalf, but you are permitted to hire your own lawyer if you would like to do so. For example, you can ask him or her to appear in court for you if you want someone other than class counsel to speak for you. However, if you choose to hire your own lawyer, you will personally have to pay that lawyer.

13. How will the lawyers be paid?

If class counsel get money for the class, either as a result of trial or settlement, they may ask the court for their fees and expenses. You will not have to pay these fees and expenses. If the court grants class counsel’s request, the fees and expenses would either be deducted from any money obtained for the class or paid separately by the United States. If the class counsel’s fees and expenses are paid out of the money obtained for the class, there will be a reduction in the amount available for distribution to class members, and it may reduce the amount of money you may be awarded. If there is no recovery in this case, you will not be required to pay any attorneys’ fees or costs to class counsel. In no event will you be asked to pay class counsel directly (“come out of pocket”) to pay their fees and costs. However, as mentioned in question 12, if you choose to hire your own lawyer, you will personally have to pay that lawyer.

14. How and when will the court decide who is right?

As long as the case is not resolved by a settlement or otherwise, class counsel will have to prove plaintiff’s claims at trial. The court will schedule a trial that likely will be held in Michigan at a federal courthouse to be determined. During the trial, the judge will hear all the evidence to help him reach a decision about whether plaintiff or defendant are right about the claims in the lawsuit. There is no guarantee that plaintiff will win, or will get any money for the class.

15. Will I get money after the trial?

If plaintiff obtain money as a result of the trial or a settlement, you will be notified about how to participate. We do not know how long this will take.

The amount of money is based on the value of your property allegedly taken. The value of each property has yet to be determined, but could be substantial.

16. Do I have to come to the trial?

You do not need to attend the trial. Class counsel will present the case for all plaintiff, and the United States will present the defenses. You or your own lawyer are welcome to come at your own expense.

17. Where is the form for me to fill out to apply to join the class action?

If you wish to join this class action, please complete the Opt-In Notice form on the next page, and then mail it to the address provided at the bottom of the Claim Form on the next page, or fax it to the identified fax number, or you may hand deliver it to class counsel. If you fax the form, **please fax it by August 3, 2011**. If you mail the form, **please make sure it is post-marked by August 3, 2011**. Submitting the form in a timely manner will allow class counsel time to file your Opt-In Notice and to establish proof of your claim. Otherwise, you will **not** be eligible to join the class action.

18. Are more details available?

The pleadings and other records in this lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the United States Court of Federal Claims, and are available over the Internet through the PACER website described in paragraph 4.

The address for the court is:

United States Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20005.

For more information about this lawsuit, you may contact class counsel. The address for class counsel is:

Mark F. ("Thor") Hearne, II
Arent Fox, LLP
112 south Hanley Road, Suite 200
St. Louis, Missouri 63105

The telephone number to reach class counsel is: (314) 721-0219. Class counsel can also be reached via e-mail at largent.meghan@arentfox.com.

UNITED STATES COURT OF FEDERAL CLAIMS

Douglas Bigelow Trust, et al. v. United States

Case No. 09-460L

***Fill out this form completely and legibly. IT MUST BE MAILED (OR FAXED) TO CLASS COUNSEL AT THE ADDRESS BELOW AND RECEIVED BY August 3, 2011.**

I, _____, consent to opt-in to the class action lawsuit against the United States to assert claims for a taking of private property for public use without just compensation. I declare, upon information and belief, as follows:

On July 29, 2003, I owned land that was immediately next to or traversed by the railroad right of way formerly operated by Mid-Michigan Railroad, Inc., located in Gratiot County, Michigan, between Alma, Michigan and Elwell, Michigan.

By signing my name in the space below, I am indicating that I wish to join the class action and have my claim for compensation pursued by named plaintiff against the United States. I am also declaring, under penalty of perjury under the laws of the United States and applicable state laws, that I am one of the property owners, or an heir or legal representative of one of the property owners described in the accompanying notice, and that, to the best of my knowledge, I believe I am entitled to a distribution arising out of this lawsuit according to the description of the Government's alleged taking of private property as printed in the accompanying Notice.

Note: If you represent an entity making a claim, such as a corporation, partnership, or trust, please identify the name of that entity in this Opt-In Notice, but sign in your own name as a representative of that entity. If you owned the land with another person or entity, it is only necessary that one of the owners sign this form, but it is helpful if you identify all owners.

Date: _____

Signature:

Name:

Street Address of Property that is
Next to the Railroad Line:

Current Mailing Address:

Other contact information (optional):

HOME TELEPHONE: (____) ____ - ____

WORK TELEPHONE: (____) ____ - ____

CELL PHONE: (____) ____ - ____

E-MAIL ADDRESS:

PLEASE RETURN YOUR SIGNED CLAIM FORM TO (a stamped, addressed envelope has been provided for your convenience):

Douglas R. Bigelow Trust, et al. v. United States Class Action
c/o Mark F. ("Thor") Hearne, II
Arent Fox, LLP
112 South Hanley Road, Suite 200
St. Louis, Missouri 63105

You can also fax your signed claim form to: (202)-857-6395 (Attn: Sarah White).

If you have any questions, please call class counsel at (314) 721-0219.